

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUN 12 1996

In the Matter of)
)
Allocation of Costs Associated with) CC Docket No. 96-112
Local Exchange Carrier Provision of)
Video Programming Services)

AMERITECH'S REPLY COMMENTS

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Michael J. Karson
Attorney for Ameritech
Room 4H88
2000 West Ameritech Center Drive
Hoffman Estates, IL. 60196-1025
847-248-6082

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AMERITECH'S REPLY COMMENTS

The Ameritech Operating Companies¹ ("Ameritech" or the "Company") respectfully offer the following reply to the initial comments on the Notice of Proposed Rulemaking released in the above-captioned docket on May 10, 1996 ("NPRM").²

In the NPRM, the Commission makes several proposals to change its cost allocation rules which allocate common costs between regulated and nonregulated services.

¹ The Ameritech Operating Companies are: Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, The Ohio Bell Telephone Company and Wisconsin Bell, Inc.

² The Commission limited reply comments to 15 pages. NPRM at par. 66.

I.

INTRODUCTION AND SUMMARY

Ameritech made three basic points in its initial comments:

First: The Commission should forbear from applying its Part 64 cost allocation rules to carriers which operate under pure price cap regulation.

Second: If the Commission decides to continue to apply its Part 64 rules to pure price cap carriers, then those rules should be streamlined.

Third: If the Commission decides not to forbear from or streamline its Part 64 rules, then it should not amend those rules at all because they currently are more than sufficient for the Commission's intended purpose.

Nothing in the initial comments filed by others in this docket causes Ameritech to change these basic views.

In fact, a review of the NPRM as well as the initial comments shows that there is nothing in the record in this docket to explain why additional,

more rigid cost allocation rules are needed at the present time.³ It was just 18 months ago, after all, that the Commission specifically rejected claims that Part 64 needed to be amended to prevent cross-subsidization of nonregulated video programming services. It would be arbitrary and capricious for the Commission to reverse itself on this conclusion without some reasoned basis in the record. And if the basis for this reversal is a desire to use cost allocation as a way to intentionally redirect significant costs from regulated to nonregulated (but not vice versa)⁴ and then, through exogenous treatment, to effectuate systematic reductions in a carrier's price cap index even though productivity already has been accounted for in the "X" factor, that would be not only arbitrary and capricious and a violation of the Commission's price cap rules -- it would be confiscatory, as well.

³ Some parties argue that the Commission has the authority under Section 201 of the Act to mandate Part 64. E.g. AT&T at 2. But that is not the issue. The issue is whether the Commission should continue to mandate Part 64 for pure price cap carriers.

⁴ The Commission says that its "rules will intentionally allocate a significant part of common costs to non-regulated services." NPRM at par. 23.

II.

NONE OF THE PARTIES FILING COMMENTS PROVIDE ANY LEGITIMATE REASON WHY THE COMMISSION SHOULD CONTINUE TO APPLY ITS COST ALLOCATION RULES TO PURE PRICE CAP CARRIERS.

Part 64 -- a remnant of traditional rate base/rate of return regulation -- was adopted by the Commission "to protect ratepayers from bearing the costs and risks of nonregulated activities."⁵ Pure price cap regulation severs the relationship between cost and price. Under pure price cap regulation, the price of regulated services are unaffected by the Commission's cost allocation rules. Therefore, the Commission should forbear from applying its cost allocation rules to pure price cap carriers because those rules no longer are necessary "to protect ratepayers from bearing the costs and risks of nonregulated activities."⁶ Many others agreed with this argument.⁷

The self-serving arguments of those who favor continued application of Part 64 to pure price cap carriers are unpersuasive. Some, for example, say that a carrier operating under pure price cap regulation today can opt for sharing in the future, or may not be subject to pure price cap regulation at the state level and thus should continue to be subject to the Commission's cost allocation rules. Yet, the Commission can resolve this objection simply by

⁵NPRM at par. 9.

⁶Id.

⁷Southwestern Bell at 4; GTE at 5-6; USTA at 6; Bell Atlantic at 3-4; Pacific Telesis at 3-6; NYNEX at 3; SNET at 4-5 (arguing that Part 64 is not necessary under price cap regulation even with sharing).

saying that it will forbear from applying Part 64 to pure price cap carriers only as long as they remain subject to pure price cap regulation.

Others argue that Section 254(k) of the Act requires continued application of Part 64 rules to pure price cap carriers. Section 254(k) of the Act provides as follows:

A telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition. The Commission, with respect to interstate services, and the States, with respect to intrastate services, shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services. (Emphasis Added)

As is clear from this plain language, the only cost allocation rules mentioned in Section 254(k) are those which are necessary to ensure that services within the definition of universal service bear a reasonable share of joint and common costs. But since the rates for a pure price cap carrier are not regulated on the basis of cost, the Commission's Part 64 cost allocation rules are not necessary to ensure a reasonable allocation of joint and common costs.

However, if the Commission concludes that its Part 64 cost allocation rules are necessary to ensure that noncompetitive services do not subsidize services that are subject to competition, then the plain language of Section 254(k) requires the Commission to apply those Part 64 rules to all

telecommunications carriers -- including the interexchange carriers and cable operators who never miss an opportunity to promote the application of onerous regulatory rules on their competitors but never on themselves.⁸

Cox Communications argues that Part 64 should apply to pure price cap carriers because misallocations of costs to regulated can reduce a carrier's productivity factor in future years.⁹ Cox is wrong. Although the methodology for the industry productivity factor for price cap regulation is being addressed in another docket, the Commission has tentatively concluded that the proposed Total Factor Productivity ("TFP") offset to the price cap index should be based on total company data such that all efficiency gains are reflected.¹⁰ Therefore, any shifting of costs between regulated and nonregulated would not impact the TFP offset. Moreover, since the TFP offset is based on industry data, any cost shifting between regulated and nonregulated for a particular carrier would be of no consequence to that carrier in its application of the TFP offset.

⁸ AT&T suggests that Section 254(k) of the Act applies only to "incumbent LECs" (AT&T at 2), but does so by disingenuously replacing the term "telecommunications carrier" -- the term used in Section 254(k) -- with "incumbent LEC" -- a term which is not used in Section 254(k).

⁹ Cox at 11 and Exhibit B.

¹⁰ Price Cap Performance Review for Local Exchange Carriers, CC Docket 94-1, First Report and Order, rel. April 7, 1995 at par. 159; Fourth Further Notice of Proposed Rulemaking, rel. Sept. 27, 1995 at par. 25.

The only other idea offered in support of Part 64 applying to pure price cap carriers relates to how cost allocation -- specifically, from regulated to nonregulated -- could be accorded exogenous treatment and thus have the effect of reducing the carrier's price cap index.¹¹ However, as the Commission recognizes in the NPRM, exogenous treatment under the Commission's price cap rules was not intended as a general rule to apply to changes in a carrier's cost of providing regulated services.¹² The only exceptions relate to matters that are beyond the control of the carrier, not reflected in the GDPPI and are economic, i.e. affect cash flow¹³ and these exceptions do not apply to the proposals in the NPRM.

AT&T argues that exogenous treatment for reallocation of costs from regulated to nonregulated is required by the Commission's current cost allocation rules. Specifically, AT&T says that:

[t]he price cap rules already define exogenous cost changes as 'those [changes] caused by ... [t]he reallocation of investment from regulated to nonregulated activities pursuant to 'the Commission's Part 64 cost allocation rules. [Citing] 47 C.F.R. Section 61.45(d)(1)(v). See also 47 C.F.R. Section 61.44(c)(4).¹⁴

¹¹ The Pennsylvania Office of Consumer Advocate at 16 says that unless the Commission's Part 64 rules have the effect of reducing a price cap carrier's index, cost allocation "becomes an empty exercise" The Commission, on the other hand, has acknowledged that use of exogenous cost adjustments impede the development of market-based rates. Interim Price Cap Order at par. 299 ("This progress toward market-based rates and away from rate of return regulation will be impeded, however, if we continue indefinitely to allow exogenous cost adjustments that have the purpose and effect of perpetuating the relationship between accounting costs and rates that existed on July 1, 1990.").

¹² NPRM at par. 58.

¹³ In the Matter of Price Cap Performance Review for Local Exchange Carriers, Docket 94-1, Report and Order, rel. April 7, 1995 at pars. 298-299

¹⁴ AT&T at 10.

This is misleading. Section 61.45(d)(1)(v) addresses exogenous cost changes due specifically to “[t]he reallocation of investment from regulated to nonregulated activities pursuant to Section 64.901” (emphasis added), not pursuant to the Commission’s Part 64 cost allocation rules generally, as AT&T represents. Likewise, Section 61.44(c)(4) addresses exogenous cost changes due specifically to “[t]he reallocation of investment from regulated to nonregulated activities pursuant to Section 64.901” (emphasis added). The distinction between AT&T’s citation to “the Commission’s Part 64 cost allocation rules” on the one hand, and Section 64.901, on the other, is important because the only context in Section 64.901 where a “reallocation” can occur is Section 64.901(b)(4) which addresses forecasts which later prove to be inaccurate. It is unreasonable for AT&T to argue that the exogenous treatment accorded to a “reallocation” of cost due to an inaccurate forecast has any applicability to fixed factor allocations made generally on the basis of Part 64 rules.

Some argue that exogenous treatment for cost allocations is necessary to ensure that regulated services share in the economies of scope associated with joint regulated/nonregulated use of common plant. But, that “sharing” already occurs through the productivity offset; use of exogenous treatment to

effectuate additional "sharing" would violate the Commission's price cap rules, would be arbitrary and capricious and would amount to confiscation.¹⁵

Nevertheless, if the Commission decides to accord exogenous treatment to cost allocations in this manner notwithstanding all of the reasons why it should not, it should do so only with respect to investment which was included in the initial price cap rates. As Pacific Telesis correctly notes: "Because such new investment [i.e., investment made after the July 1990-June 1991 period for which initial price cap rates were established] has never been part of the price cap equation, it should not be 'taken out of' price cap rates."¹⁶

III.

THERE IS NOTHING IN THE RECORD TO SUPPORT ADDITIONAL, MORE RIGID COST ALLOCATION RULES AT THIS TIME.

If the Commission decides not to forbear from applying its cost allocation rules to pure price cap carriers then, as Ameritech argued in its initial comments, those rules should be streamlined or, at a minimum,

¹⁵ Section 706 of the 1996 Act requires the Commission to utilize price cap regulation, in a manner consistent with the public interest, to encourage deployment of advanced telecommunications capabilities. Use of cost allocations to reduce a carrier's price cap index would have exactly the opposite effect.

¹⁶ Pacific Telesis at 18. See also BellSouth at 11-13; NYNEX at 22-24. Because any broadband investment made after the July 1990-June 1991 period for which initial price cap rates were established has not been part of the price cap equation, it is difficult to understand how some parties can reasonably conclude that they have "subsidized" recent plans of local exchange carriers to enter the video programming market. E.g. MCI at 12; Cox at 3-4.

simply left alone.¹⁷ The Commission reaffirmed just 18 months ago that its Part 64 rules were more than sufficient to prevent cross-subsidization of nonregulated video programming services

We [the Commission] reject claims that we should amend Part 64 because current rules would not prevent LECs from improperly subsidizing video dialtone nonregulated services. To the contrary, we conclude that existing Part 64 rules do not require modification to prevent such an outcome.¹⁸

The additional, more rigid cost allocation rules proposed in the NPRM are no more justified now than they were 18 months ago when the Commission last addressed the matter.¹⁹ Indeed, more rigid cost allocation rules are even less justified today under the 1996 Act given that a “de-regulatory national policy framework” is one of its overarching goals.²⁰

The contrary arguments of some of the parties filing comments in this docket are not persuasive. For example, MCI argues that more detailed and

¹⁷ There is nothing in the 1996 Act which requires the Commission to adopt more rigid cost allocation rules; in fact, as the Commission itself recognizes, one of the overarching goals of the Act is that the Commission “provide for a pro-competitive, de-regulatory national policy framework” NPRM at par. 1 (emphasis added) citing Conference Report, S. Rep. 104-230 at 113 (Feb. 1, 1996)(“Conference Report”).

¹⁸ In the Matter of Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58, CC Docket No. 87-266, Memorandum Opinion and Order on Reconsideration, rel. Nov. 7, 1994 at par. 179 (“VDT Recon. Order”). Ironically, many of the proposals in the NPRM have their origin in the Commission’s video dialtone-related proceedings in CC Docket No. 87-266, even though Congress specifically stated that those rules and regulations “shall not apply to the operation of an open video system.” Conference Report at 179.

¹⁹ Accord Sprint at 2-5; Southwestern Bell at 4.

²⁰ Accord GTE at 4.

rigid cost allocation rules are necessary so that interexchange carriers are not forced to “continue subsidizing” local exchange carrier entry into the interexchange market.²¹ Pure price carriers, however, have no incentive to engage in any cross-subsidization; therefore, more rigid cost allocation rules are not necessary. But if cost allocation rules continue to be necessary, Part 64 is more than sufficient to satisfy the Commission’s goals. In fact, as the General Services Administration (GSA) notes, there has been little controversy in the past about the effectiveness of the Commission’s Part 64 rules.²²

But the best evidence that rigid, inflexible cost allocation rules are not reasonable is the fact that so many of the parties disagree on what a mandatory, fixed allocation rule should be. Some parties think a 28% fixed allocation to nonregulated would be reasonable given their particular circumstances.²³ Some say 50%.²⁴ Some others say 55% to 60%.²⁵ Still others

²¹ MCI at 12.

²² GSA at 8.

²³ Bell Atlantic at 9.

²⁴ SNET at 16-18. Puerto Rico Telephone Company (at 6-9), on the other hand, says that a 50/50 split for loop allocation would be arbitrary and confiscatory.

²⁵ MCI at 10.

say 75%,²⁶ or more.²⁷ Two parties using the same data come to wildly different conclusions.²⁸ One party says the Commission should adopt a fixed factor using a TSLRIC standard.²⁹ Another party says that the fixed allocation percentage to nonregulated need not be based at all on cost, but may be based on universal service/public policy principles.³⁰

Different allocations may be reasonable based on different circumstances. For example, services will be deployed using different technologies. Different network architectures undoubtedly will be used and different deployment timetables will be followed. Usage patterns invariably will be different. Costs may be different. These kinds of differences will

²⁶ Cox at 8; Time Warner at 10. This particular allocation percentage seems to be based on the mistaken belief that a substantial majority of broadband facilities deployed by carriers in the future will support only nonregulated services.

²⁷ Continental at 2-3. Rigid allocations based on bandwidth, as recommended by Continental, would be unreasonable for several reasons. First, not all broadband services which employ video formats will be nonregulated. Second, the cost of additional equipment necessary to add two-way narrowband telephony signals to the traditional one-way Hybrid Fiber Coax (HFC) transmission facility is substantial compared to the cost of the same type of facility if designed to carry only traditional cable TV-type services. Third, if 24 Mhz is designated, as Continental has assumed, for each of the 12-24 homes in a fiber-to-the-curb architecture, then that would require designation of 2 Ghz for data transmission services on a 750 Mhz facility which accommodates 2000 homes. Even assuming that each HFC bus accommodates only 500 homes, 500 Mhz of the facility's 750 Mhz capacity would then be reserved for data transmission, leaving only 250 Mhz for traditional video entertainment services.

²⁸ NCTA at 20; Bell Atlantic at 9.

²⁹ AT&T at 4-9. AT&T proposes the use of the Hatfield model for this purpose. MCI, while proposing the use of a stand-alone cost ceiling, also recommends use of the Hatfield model. MCI at 7. The merits of any mandatory fixed factor aside, Ameritech disagrees with the Hatfield model for the reasons cited in its May 30, 1996 Reply Comments in CC Docket 96-98, at 32. Moreover, it would be unreasonable to introduce and apply pricing principles and "cost capping" to this cost allocation docket because cost allocation has nothing to do with the pricing of nonregulated services, as the Commission recognized in its Joint Cost proceeding. See Joint Cost Order, Docket 86-111, rel. Feb. 6, 1987 at par. 40.

³⁰ Time Warner at 8. This rationale is not supported by anything in the Commission's current cost allocation rules or in the NPRM proposals. However, if this rationale is adopted, it logically should apply to all telecommunications providers, not just incumbent local exchange carriers.

necessarily result in differences in cost allocations among carriers. The Commission expressly recognized as much 18 months ago when it characterized its Part 64 rules as follows:

Part 64, for the most part, does not prescribe cost categories or allocation factors. Rather, each carrier selects, subject to public comment and Commission review, the cost pools and allocators it needs to identify the costs of all of its nonregulated activities. The Commission chose this approach because it believed that the mix of nonregulated activities and the organizational structure would vary widely from carrier to carrier, and that a single, prescribed manual could not adequately encompass the possible variations.³¹

This rationale for not prescribing uniform cost categories or allocation factors is as valid now as it was 18 months ago. In fact, the argument against uniform allocation factors is implicitly acknowledged by those parties who recommend the adoption of fixed factors insofar as they also say that those factors must be updated periodically to accommodate changing circumstances. Instead of adopting rigid, "one-size-fits-all" cost allocation rules, the Commission should continue to allow carriers filing cost allocation manuals to propose, subject to Commission review, the allocations that make most sense given their particular technology, network and organization.³² This kind of flexibility is present in the Commission's current cost allocation rules, and would not be undermined in any respect by Ameritech's

³¹ VDT Recon. Order at par. 180.

³² *E.g.* Southwestern Bell at 10; SNET at 9-12. An arbitrary fixed factor imposed uniformly on the industry would not necessarily be cost causative and that would be contrary to the Commission's cost allocation principles.

recommendations for streamlining those rules as shown on Exhibit B in Ameritech's initial comments.

However, if the Commission decides to adopt new, rigid cost allocation factors because of nonregulated broadband services which may be provided in the future, those factors should be applied to new investment which supports those services and should not be applied to embedded plant which does not. And no exogenous change should apply because those investments are not part of the price cap equation.

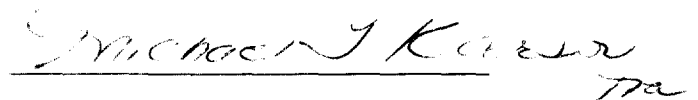
IV.

CONCLUSION

For the reasons stated in Ameritech's initial comments and in this reply, the Commission should forbear from applying its cost allocation rules to pure price cap carriers. If the Commission decides not to forbear from applying Part 64 under those circumstances, then it should streamline Part 64 in the manner Ameritech has recommended. If the Commission decides not

to streamline its Part 64 cost allocation rules, it simply should leave those rules alone because there is nothing in the record in this docket to justify additional, more rigid rules.

Respectfully submitted,

A handwritten signature in cursive script, reading "Michael J. Karson". The signature is written in dark ink and is positioned above a horizontal line.

Michael J. Karson
Attorney for Ameritech
Room 4H88
2000 West Ameritech Center Drive
Hoffman Estates, IL. 60196-1025
847-248-6082

June 12, 1996

CERTIFICATE OF SERVICE

I, Edith Smith, do hereby certify that a copy of the foregoing Ameritech's Reply Comments has been served on the parties listed on the attached service list, via first class mail, postage prepaid, on this 12th day of June, 1996.

By: Edith Smith / ma
Edith Smith

David L. Brenner
Neal M. Goldberg
David L. Nicoll
NATIONAL CABLE TELEVISION
ASSOCIATION, INC.
1724 Massachusetts Ave., N.W.
Washington, DC 20036

Philip L. Verveer
Gunnar D. Halley
WILLKIE FARR & GALLAGHER
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20036

Jay C. Keithley
SPRINT LOCAL TELEPHONE COMPANIES
1850 M Street, N.W.
Suite 1100
Washington, DC 20036

Craig T. Smith
P.O. Box 11315
Kansas City, MO. 64112

Jerry Yanowitz
Jeffrey Sinsheimer
CALIFORNIA CABLE TELEVISION
ASSOCIATION
4341 Piedmont Avenue
Oakland, California 94611

Donna N. Lampert
James J. Valentino
MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY & POPEO, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, DC 20004-2608

Brian Conboy
Theodore Case Whitehouse
WILLKIE FARR & GALLAGHER
TIME WARNER CABLE
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20036

Lawrence Fenster
MCI TELECOMMUNICATIONS
CORPORATION
1801 Pennsylvania Ave., NW
Washington, DC 20006

Werner K. Hartenberger
Laura H. Phillips
DOW, LOHNES & ALBERTSON
COX COMMUNICATIONS
1200 New Hampshire Avenue, NW
Suite 800
Washington, DC 20036

Philip F. McClelland
Assistant Consumer Advocate
PENNSYLVANIA OFFICE OF CONSUMER
ADVOCATE
1425 Strawberry Square
Harrisburg, PA 17120

Peter Arth, Jr.
Edward W. O'Neill
Helen M. Mickiewicz
STATE OF CALIFORNIA &
THE PUBLIC UTILITIES COMMISSION
505 Van Ness Avenue
San Francisco, CA 94102

Kathy L. Shobert
DIRECTOR, FEDERAL AFFAIRS
901 15th St., NW, Suite 900
Washington, DC 20005

Jamce Obuchowski
Of Counsel
BROADBAND TECHNOLOGIES, INC.
Halprin, Temple, Goodman & Sugrue
1100 New York Avenue
Suite 650 East
Washington, DC 20005

Mary McDermott
Linda Kent
Charles D. Cosson
Keith Townsend
UNITED STATES TELEPHONE
ASSOCIATION
1401 H Street, NW
Suite 600
Washington, DC 20005

Robert M. Lynch
Durward D. Dupre
Jonathan W. Royston
SOUTHWESTERN BELL TELEPHONE
COMPANY
One Bell Center
Room 3520
St. Louis, Missouri 63101

Lucille M. Mates
Sarah Rubenstein Thomas
April J. Rodewald-Fout
PACIFIC BELL
NEVADA BELL
140 New Montgomery St. Rm. 1522A
San Francisco, CA 94105

Margaret E. Garber
PACIFIC BELL
NEVADA BELL
1275 Pennsylvania Ave, NW
Washington, DC 20004

William B. Barfield
M. Robert Sutherland
Michael A. Tanner
BELLSOUTH CORPORATION &
BELLSOUTH TELECOMMUNICATIONS,
INC.
675 West Peachtree St., NE
Suite 4300
Atlanta, GA 30375

Richard McKenna, HQE03J36
GTE SERVICE CORPORATION
P.O. Box 152092
Irving, TX 75015-2092

Gail L. Polivy
1850 M Street, NW
Suite 1200
Washington, DC 20036

Campbell L. Ayling
NYNEX TELEPHONE CORPORATION
1111 Westchester Avenue
White Plains, NY 10604

Leslie A. Vial
Edward Shakin
BELL ATLANTIC
1320 North Court House Road
Eighth Floor
Arlington, VA 22201

Sondra J. Tomlinson
U S WEST, INC.
1020 19th Street NW
Suite 700
Washington, DC 20036

Rodney L. Joyce
Ginsburg, Feldman & Bress
SOUTHERN NEW ENGLAND TELEPHONE
COMPANY
1250 Connecticut Ave., NW
Washington, DC 20036

Madelyn M. DeMatteo
Alfred J. Brunetti
SOUTHERN NEW ENGLAND TELEPHONE
COMPANY
227 Church Street
New Haven, CT 06506

Joe D. Edge
Sue W. Bladek
PUERTO RICO TELEPHONE COMPANY
DRINKER BIDDLE & REATH
901 Fifteenth Street, NW
Washington, DC 20005

Mark C. Rosenblum
Ava B. Kleinman
Seth S. Gross
AT&T CORPORATION
295 North Maple Avenue
Room 3245F3
Basking Ridge, New Jersey 07920

Kathy L. Shobert
GENERAL COMMUNICATION, INC.
Director, Federal Affairs
901 15th St., NW, Suite 900
Washington, DC 20005

Lenonard J. Kennedy
DOW, LOHNES & ALBERTSON
1200 New Hampshire Avenue, NW
Suite 800
Washington, DC 20036

Thomas R. Nathan
Deputy General Counsel
COMCAST CORPORATION
1500 Market Street
Philadelphia, PA 19102-4735

John B. Glicksman
Deputy General Counsel
ADELPHIA CABLE COMMUNICATIONS
Five West Third Street
Coudersport, PA 16915

Mary E. Newmeyer
Federal Affairs Advisor
ALABAMA PUBLIC SERVICE COMMISSION
100 North Union Street
RSA Union
P.O. Box 991
Montgomery, Alabama 36101

Michael T. Skrivan
HARRIS, SKRIVAN & ASSOCIATES, LLC
8801 S. Yale, Suite 220
Tulsa, OK 74137

Robert J. Sachs
Margaret A. Sofio
James G. White, Jr.
CONTINENTAL CABLEVISION, INC.
Lewis Wharf, Pilot House
Boston, Massachusetts 02110

Frank W. Lloyd
Donna N. Lampert
Mintz, Levin, Cohn, Ferris
Glovsky & Popeo
701 Pennsylvania Ave NW
Suite 900
Washington, DC 20004

Brenda L. Fox
CONTINENTAL CABLEVISION, INC.
1320 19th Street, Suite 201
Washington, DC 20036

Cynthia Miller
Senior Attorney
FLORIDA PUBLIC SERVICE
COMMISSION
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Maureen O. Helmer
General Counsel
NEW YORK STATE DEPARTMENT OF
PUBLIC SERVICE
Albany, New York 12223

Kenneth C. Howard, Jr.
Michael Ruger
SCRIPSS HOWARD CABLE TELEVISION
1050 Connecticut Avenue, NW
Suite 1100
Washington, DC 20036-5304

Sondra J. Tomlinson
U S WEST, INC.
1020 19th Street, NW
Suite 700
Washington, DC 20036